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20 IN THE UNITED STATES DISTRICT COURT  
21  
22 DISTRICT OF NEVADA

23 John T. Kawahara, et al.,

24 Case No. 3:14-cv-00012-MMD-WGC

25 Plaintiffs,

26 **STIPULATED PROTECTIVE ORDER**

27 vs.

28 Benjamin W. Kennedy, et al.,

Plaintiffs, John T. Kawahara and Barbara J. Kawahara, individually and as Trustees of the

John T. Kawahara and Barbara J. Kawahara Revocable Trust, U/T/D 12/17/1992 (collectively, “Plaintiffs”), and Defendants Benjamin W. Kennedy, Fennemore Craig, P.C. (“Fennemore Craig”), and Jones Vargas Chartered (“Jones Vargas”), by and through their respective counsel, have agreed to enter into a protective order pursuant to Federal Rule of Civil Procedure 26(c) to be applied to this matter. The Parties agree that a protective order is required to expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality and adequately protect confidential material. Accordingly, the Parties respectfully request that the following protective order be entered by the Court:

1           IT IS HEREBY ORDERED that:

2           1. This Stipulated Protective Order ("Protective Order") shall apply to all  
3 information, materials, or things subject to discovery in this action and produced from and after  
4 the agreement of the Parties to the terms of the Protective Order ("Discovery Materials"),  
5 including, without limitation, documents, testimony, and responses to information and discovery  
6 requests provided pursuant to the Federal Rules of Civil Procedure, which contain proprietary,  
7 confidential, or commercially sensitive information. The term "Party" (or, collectively, "Parties")  
8 means Plaintiffs, Benjamin W. Kennedy, Fennemore Craig, and Jones Vargas.

9           2. Discovery Materials may be designated, in appropriate circumstances, as  
10 CONFIDENTIAL by a Party or non-party. The CONFIDENTIAL designation shall only be used  
11 for information or material that is intended by a Party or non-party to be CONFIDENTIAL, as to  
12 which the Party or non-party has exercised reasonable steps to maintain its secrecy, and as to  
13 which the Party or non-party believes, in good faith, that there is good cause for  
14 CONFIDENTIAL treatment. Notwithstanding the fact that a document, portion of a document or  
15 category of documents is specifically encompassed by the above definition, each Party reserves  
16 its rights to object to the production of any such documents or any other grounds as may be  
17 available by law or rule of procedure.

18           3. Discovery Materials may be designated as CONFIDENTIAL by a Party or non-  
19 party by stamping the words CONFIDENTIAL on the face of each page of the document or  
20 designating information as CONFIDENTIAL by reference to the document and page number  
21 being designated. Notwithstanding a Party or non-party's failure to stamp a document as  
22 CONFIDENTIAL or designate by reference, the Parties agree that all Discovery Materials  
23 provided pursuant to this Protective Order shall be treated as CONFIDENTIAL until such time, if  
24 any, that contrary treatment is permitted pursuant to the terms of this Protective Order.

25           4. Any Party or non-party may designate deposition testimony or any portion of  
26 deposition testimony CONFIDENTIAL by advising the reporter and counsel of such designation  
27 during the course of the deposition or at any time thereafter. Any portions of any deposition  
28 designated CONFIDENTIAL may only be filed with the Court if the provisions of Paragraph 5

1 below are complied with. Whenever any Discovery Materials designated as CONFIDENTIAL  
2 are identified as an exhibit in connection with testimony given in this civil proceeding, they shall  
3 be so marked and, if sought to be filed with the Court, the Party shall seek approval from the  
4 Court to file the CONFIDENTIAL exhibit under seal with the Court, as provided in Paragraph 5  
5 below.

6       5. Absent a stipulation between the Parties or a court order secured after appropriate  
7 notice to all interested persons, a Party may not file in the public record in this action any  
8 Discovery Material that has been designated as CONFIDENTIAL. The Party seeking to file any  
9 document with the Court that contains any CONFIDENTIAL information shall seek approval to  
10 file that document under seal. If a Party wishes to file or lodge Discovery Materials containing  
11 CONFIDENTIAL information under seal, the other Party shall not unreasonably withhold  
12 agreement to such procedure. If an agreement is reached, the parties shall submit to the Court a  
13 joint motion for leave to file or lodge those documents under seal. Pursuant to LR 10-5, if no  
14 such agreement is reached, such papers shall be filed with the Court under seal and must be  
15 accompanied by a motion for leave to file those documents under seal. In either event, such  
16 motions and accompanying documents shall be filed in accordance with the court's electronic  
17 filing procedures. If papers are filed under seal pursuant to prior court order, the papers shall bear  
18 the following notation on the first page, directly under the case number "FILED UNDER SEAL  
19 PURSUANT TO COURT ORDER DATED \_\_\_\_\_." Further, in the event any stamped  
20 CONFIDENTIAL document or the information contained therein is included with, or the contents  
21 thereof are in any way disclosed, in any pleading, motion, deposition transcript or other paper  
22 filed with Clerk of any Court, the party seeking protection will have an opportunity to ask the  
23 Court to preserve the confidentiality of that stamped CONFIDENTIAL document as the Court  
24 deems appropriate, consistent with the Ninth Circuit's opinion in *Kamakana v. City and County*  
25 of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006). Until the Court makes a determination on  
26 the preservation of confidentiality, such protected documents and information shall be filed under  
27 seal and maintained under seal by the Clerk until further order of this Court in accordance with  
28 this Order and LR 10-5. The use of any protected document or of the information contained

1 therein and any testimony associated with the protected information contained therein shall be  
 2 held in camera, if necessary, to prevent disclosure to nonparties, or otherwise under such  
 3 circumstances as will prevent the inadvertent disclosure of such documents and information,  
 4 unless the Court orders otherwise upon good cause shown. If a Party seeks to file under seal any  
 5 CONFIDENTIAL information, and the Court denies the request to file under seal, then within  
 6 seven (7) days thereafter, the designating Party must file a request with the Court to seal the  
 7 Discovery Materials containing the CONFIDENTIAL information, along with a supporting  
 8 declaration, otherwise the CONFIDENTIAL information will be filed in the public record.

9       6. Except upon prior written consent of the Party asserting CONFIDENTIAL  
 10 treatment or upon further order of a court of competent jurisdiction, information or material  
 11 designated as CONFIDENTIAL shall be held in strict confidence and shall be used solely for the  
 12 purposes of prosecution or defense of this civil proceeding, and shall not be used for any other  
 13 purposes.

14       7. Except as otherwise provided for in Section 9 of this Protective Order, all  
 15 CONFIDENTIAL information and material shall remain in the possession of counsel for the  
 16 respective Parties, and be stored in a secure place.

17       8. (a) No Party concedes that any information or material designated by another Party  
 18 as CONFIDENTIAL does in fact contain or reflect trade secrets, proprietary or confidential  
 19 information, or has been properly designated as CONFIDENTIAL. Notwithstanding the  
 20 provisions of Section 11 below, any Party may at any time, on reasonable notice, move for (i)  
 21 modification of this Protective Order, or (ii) relief from the provisions of this Protective Order  
 22 with respect to specific information or material, including without limitation the use of  
 23 CONFIDENTIAL information or material as exhibits at depositions, and in addition, the parties  
 24 may agree to necessary modifications of this Protective Order. Should any Party hereto seek to  
 25 utilize any CONFIDENTIAL information or material at the hearing of this matter, counsel for  
 26 such Party shall meet with counsel for the opposing Party in an effort to agree upon a procedure  
 27 to ensure the confidentiality of such information or material. In the event counsel is unable to  
 28 reach agreement, the matter will be submitted to the Court for resolution.

11       9. Except with the prior written consent of the Parties or upon prior order of the  
12 Court obtained upon noticed motion, information or material designated as "CONFIDENTIAL"  
13 shall not be shown, delivered, or disclosed to any person other than:

- a) The Parties to this litigation;
  - b) The Parties' litigation counsel of record or members of such counsel's firm, associates for the respective Parties to this litigation, and paralegal, clerical, secretarial, administrative employees of such counsel assigned to assist in the preparation of this litigation;
  - c) Any employee of any of the Parties involved in the litigation or any employee of a Party (if such employee is involved in the litigation on behalf of a Party), and attorneys for the respective parties who are advising the parties, including clerical, secretarial, and support staff of counsel assigned to assist in the preparation of this litigation;
  - d) Employees of any professional photocopy service or other litigation support staff employed by counsel in the preparation of this litigation;
  - e) Any author, recipient, or producing Party of such material;
  - f) The Court and any persons employed by the Court whose duties require access to the litigation; and

1                   g) Any independent expert retained to assist in the preparation of this case or to  
 2 testify at trial or any other proceeding in this action. This includes stenographic and clerical  
 3 employees associated with such persons; and

4                   h) Court reporters and other persons involved in recording deposition testimony in  
 5 this action by any means.

6                   Any person or entity receiving or possessing CONFIDENTIAL information or material  
 7 subject to this Section 9 after the effective date of this Protective Order, other than the Parties  
 8 who are bound by this Protective Order and those persons or entities described in subsections (f)  
 9 and (h), shall be bound by the terms of this Protective Order and shall execute the  
 10 "Acknowledgement and Agreement to be Bound" in the form attached hereto as "Exhibit A."  
 11 Any such person or entity receiving or possessing CONFIDENTIAL information under or  
 12 pursuant to this section shall also keep and maintain such materials in a secure place.

13                  10. Provided all the procedures of governing disclosure as set forth herein are  
 14 followed and complied with, neither the provisions of this Protective Order nor the filing of any  
 15 information or material under seal shall prevent the use, in open court, at any hearing, or at trial of  
 16 this case, of any information or material that is subject to this Protective Order or filed under seal  
 17 pursuant to its provisions.

18                  11. Unless ordered by a Court or agreed to in writing by the Parties, all material  
 19 designated as CONFIDENTIAL pursuant to this Protective Order shall be treated in accordance  
 20 with its designation and shall not be disclosed except under the terms of this Protective Order.

21                  a) In the event that any Party objects to the designation of any information or  
 22 material, such Party may, in writing, request the designating Party to remove or change the  
 23 designation. Such written request shall specifically identify the information or material at issue.

24                  b) The designating Party shall respond in writing within five (5) business days of  
 25 receipt of the written request, or within such other period of time as may be designated by order  
 26 of the Court or agreed to by the Parties. If the designating Party refuses to remove or change the  
 27 designation as requested, its written response shall state the reasons for this refusal. Failure to  
 28 provide a timely written response shall be deemed a refusal of the request.

1                   c) If the designating Party fails to respond to a request or refuses to remove or  
 2 change the designation, the Party requesting re-designation shall have three (3) business days to  
 3 file a motion seeking such re-designation. It shall be the burden of the designating Party to  
 4 establish that the information or material is correctly designated within the meaning of this  
 5 Protective Order, and applicable case law.

6                   d) In the event of such a motion, the information or material at issue may be  
 7 submitted to the Court for in camera inspection.

8                 12. The Parties understand and agree that this Protective Order does not waive any  
 9 additional privilege, right of privacy or right of confidentiality that may apply to any interrogatory  
 10 or request for production served by any Party. Further, this stipulation does not waive or abrogate  
 11 any objection made by any Party in response to any other interrogatory or request for production.

12               13. The provisions of this Protective Order shall not terminate at the final conclusion  
 13 of this litigation. This Protective Order shall remain in full force and effect in perpetuity unless  
 14 modified, superseded or terminated by written consent of the parties or by order of the Court.  
 15 Each person subject to this Protective Order shall continue to be subject to the jurisdiction of the  
 16 United States District Court for the District of Nevada for the purpose of enforcement of the  
 17 terms of this Protective Order for as long as the Protective Order remains in effect. The Court  
 18 shall not be divested of the power to enforce the terms of this Protective Order as to any persons  
 19 subject to the Protective Order by the final conclusion of this litigation or by the filing of a notice  
 20 of appeal or other pleading that arguably has the effect of divesting this Court of jurisdiction of  
 21 this matter generally.

22               14. No later than 45 days after the final adjudication of this action, including any  
 23 appeals, and upon written request by a designating Party, all information or material designated  
 24 pursuant to this Protective Order shall be returned to the designating Party or shall be destroyed  
 25 (provided, however, counsel for each Party may retain one copy of any designated document,  
 26 which will remain subject to this Protective Order), unless a motion seeking modification of this  
 27 Protective Order is filed. In the event that such information or material is destroyed, the person or  
 28 persons responsible for such destruction shall certify in writing to the completion and manner of

destruction. This provision shall not apply to file copies of pleadings, briefs, and correspondence maintained by the Parties' counsel in their respective litigation files in the ordinary course of business.

15. The Court retains jurisdiction to make such amendments, modification, and additions to this Protective Order as it may from time to time deem appropriate. Any Party may make a request to the Court for any reasonable amendment to this Protective Order to facilitate the efficient and appropriate handling of confidential information or material.

Dated: May 26, 2015

s/ Nathan G. Kanute  
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*Attorneys for Defendants*

## ORDER

The Stipulated Protective Order of the parties (Doc. # 53) is approved with the exception of the terms in paragraph 13 which state that the court retains jurisdiction beyond the final conclusion of this litigation (possibly "in perpetuity" as suggested in paragraph 13). The court will retain jurisdiction for 45 days after the final adjudication of this action in the U.S. District Court in order to ensure compliance with paragraph 14 of the Stipulated Protective Order. However, the court will not otherwise retain jurisdiction of this matter except as authorized by law.

IT IS SO ORDERED this 2nd day of June, 2015.

Walter G. Cobb  
UNITED STATES MAGISTRATE JUDGE

## **EXHIBIT A**

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
5 that I have read in its entirety and understand the Stipulated Protective Order that was issued by  
6 the United States District Court for the District of Nevada on \_\_\_\_\_, 2015, in the case of  
7 John T. Kawahara, et al. vs. Benjamin W. Kennedy, et al., Case No. 3:14-cv-00012-MMD-WGC.  
8 I agree to comply with and to be bound by all the terms of the Stipulated Protective Order, and I  
9 understand and acknowledge that failure to so comply could expose me to sanctions and  
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
11 any information or item that is subject to the Stipulated Protective Order to any person or entity  
12 except in strict compliance with the provisions of the Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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